

SENATE BILL NO. 47

January 27, 2021, Introduced by Senator MOSS and referred to the Committee on Environmental Quality.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20138 and 20140 (MCL 324.20138 and 324.20140), section 20138 as amended by 1995 PA 71 and section 20140 as amended by 2000 PA 254.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20138. (1) All unpaid costs and damages for which a
2 person is liable under section 20126 constitute a lien in favor of
3 ~~the~~**this** state ~~upon~~**on** a facility that has been the subject of
4 response activity by ~~the~~**this** state and is owned by that person. A

1 lien under this subsection has priority over all other liens and
2 encumbrances except liens and encumbrances recorded before the date
3 the lien under this subsection is recorded. A lien under this
4 subsection arises when ~~the~~**this** state first incurs costs for
5 response activity at the facility for which the person is
6 responsible.

7 (2) If the attorney general determines that the lien provided
8 in subsection (1) is insufficient to protect the interest of ~~the~~
9 **this** state in recovering response costs at a facility, the attorney
10 general may file a petition in the circuit court of the county in
11 which the facility is located seeking either or both of the
12 following:

13 (a) A lien ~~upon~~**on** the facility subject to response activity
14 that takes priority over all other liens and encumbrances that are
15 or have been recorded on the facility.

16 (b) A lien ~~upon~~**on** real or personal property or rights to real
17 or personal property, other than the facility, owned by the person
18 described in subsection (1), having priority over all other liens
19 and encumbrances except liens and encumbrances recorded ~~prior to~~
20 **before** the date the lien under this ~~subsection~~**subdivision** is
21 recorded. However, the following are not subject to the lien
22 provided for in this subdivision:

23 (i) Assets of a qualified pension plan or individual retirement
24 account under the internal revenue code **of 1986, 26 USC 1 to 9834.**

25 (ii) Assets held expressly for the purpose of financing a
26 dependent's college education.

27 (iii) Up to \$500,000.00 in nonbusiness real or personal property
28 or rights to nonbusiness real or personal property, except that not
29 more than \$25,000.00 of this amount may be cash or securities.

1 (3) A petition ~~submitted pursuant to~~ **filed under** subsection
 2 (2) ~~shall~~ **must** set forth, with as much specificity as possible, the
 3 type of lien sought, the property that would be affected, and the
 4 reasons the attorney general believes the lien is necessary. ~~Upon~~
 5 **On** receipt of a petition under subsection (2), the court shall
 6 promptly schedule a hearing to determine whether the petition
 7 should be granted. ~~Notice~~ **The court shall provide notice** of the
 8 hearing ~~shall be provided~~ to the attorney general, the property
 9 owner, and ~~any persons~~ **a person** holding ~~liens~~ **a lien** or perfected
 10 security ~~interests~~ **interest** in the real property subject to
 11 response activity. ~~A~~ **The court shall not grant a** lien ~~shall not be~~
 12 ~~granted~~ under subsection (2) against the owner of the facility if
 13 the owner is not liable under section 20126.

14 (4) In addition to the lien provided in subsections (1) and
 15 (2), if ~~the~~ **this** state incurs costs for response activity that
 16 increases the market value of real property that is the location of
 17 a release or threatened release, the increase in value caused by
 18 ~~the~~ state funded response activity, to the extent ~~the~~ **this** state
 19 incurred unpaid costs and damages, constitutes a lien in favor of
 20 ~~the~~ **this** state ~~upon~~ **on** the real property. This lien has priority
 21 over all other liens or encumbrances that are or have been recorded
 22 ~~upon~~ **on** the property.

23 (5) A lien provided in subsection (1), (2), or (4) is
 24 perfected against real property when a notice of lien is filed by
 25 the department with the register of deeds in the county in which
 26 the real property is located. A lien ~~upon~~ **on** personal property
 27 provided in subsection ~~(2)~~ **(2) (b)** is perfected when a notice of
 28 lien is filed by the department in accordance with applicable law
 29 and regulation for the perfection of a lien on that type of

1 personal property. ~~In addition, the department shall, at~~ **At** the
2 time of the filing of the notice of lien, **the department shall**
3 provide a copy of the notice of lien to the owner of that property
4 by certified mail.

5 (6) A lien under this section continues until the liability
6 for the costs and damages is satisfied or resolved. ~~or becomes~~
7 ~~unenforceable through the operation of the statute of limitations~~
8 ~~provided in section 20140.~~

9 (7) ~~Upon~~ **On** satisfaction of the liability secured by the lien,
10 the department shall file a notice of release of lien in the same
11 manner as provided in subsection (5).

12 (8) If the department, ~~at the time or prior to~~ **before** the time
13 of filing the notice of release of lien ~~pursuant to~~ **under**
14 subsection (7), ~~has made~~ **makes** a determination that the person
15 liable under section 20126 has completed all of the response
16 ~~activity~~ **activities** at the real property ~~pursuant to~~ **under** the
17 approved remedial action plan, the department shall execute and
18 file with the notice of release of lien a document stating that all
19 response activities required in the approved remedial action plan
20 have been completed.

21 Sec. 20140. ~~(1) Except as provided in subsections (2) and (3),~~
22 ~~the limitation period for filing actions under this part is as~~
23 ~~follows:~~

24 ~~(a) For the recovery of response activity costs and natural~~
25 ~~resources damages pursuant to section 20126a(1)(a), (b), or (c),~~
26 ~~within 6 years of initiation of physical on-site construction~~
27 ~~activities for the remedial action selected or approved by the~~
28 ~~department at a facility, except as provided in subdivision (b).~~

29 ~~(b) For 1 or more subsequent actions for recovery of response~~

1 ~~activity costs pursuant to section 20126, at any time during the~~
2 ~~response activity, if commenced not later than 3 years after the~~
3 ~~date of completion of all response activity at the facility.~~

4 ~~(c) For civil fines under this part, within 3 years after~~
5 ~~discovery of the violation for which the civil fines are assessed.~~

6 ~~(2) For recovery of natural resources damages that accrued~~
7 ~~prior to July 1, 1991, the limitation period for filing actions~~
8 ~~under this part is July 1, 1994.~~

9 ~~(3) For recovery of response activity costs that were incurred~~
10 ~~prior to July 1, 1991, the limitation period for filing actions~~
11 ~~under this part is July 1, 1994.~~

12 ~~(4) Subsection (3) is curative and intended to clarify the~~
13 ~~original intent of the legislature and applies retroactively. An~~
14 **action under this part may be filed at any time.**